



DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLORN03000.L63000000.HD0000.22X.241A.HAG 22-0018]

Final Supplementary Rule for Public Lands in the Lower Lake Creek Falls Special Recreation Management Area, Lane County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Final supplementary rule.

SUMMARY: The Bureau of Land Management (BLM) Oregon/Washington State Director is finalizing a supplementary rule prohibiting the use and possession of alcoholic beverages in the Lower Lake Creek Falls Special Recreation Management Area (SRMA).

DATES: This final supplementary rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Inquiries may be directed to the BLM Northwest Oregon, Siuslaw Field Office at (541) 683-6600 or 3106 Pierce Pkwy E, Springfield, OR 97477. The final supplementary rule and accompanying environmental documents are available for inspection at the BLM Northwest Oregon, Siuslaw Field Office and on the ePlanning website at: <https://eplanning.blm.gov/eplanning-ui/project/67998/510>.

FOR FURTHER INFORMATION CONTACT: Morgan Schneider, Team Lead, Telephone: (541) 683-6407, email: BLM_OR_NO_SIU_NEPA@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

The BLM Northwest Oregon District, Siuslaw Field Office manages the Lower Lake Creek SRMA. This popular recreation site contains unique waterfalls and natural water slide features that draw visitors from throughout the region. Visitors hike along a short trail to Lake Creek and enjoy swimming in natural pools and other in-water recreational activities. The consumption of alcoholic beverages in the SRMA has resulted in increased occurrences of unsafe behavior by visitors, such as wading in fast-moving and shallow sheet water flowing over natural rock formations. This final supplementary rule will ban the possession and consumption of alcoholic beverages in the area and, as a result, return the area to a safer and more family-friendly outdoor recreation opportunity for all members of the public to enjoy.

BLM law enforcement, recreation personnel, local law enforcement, and local search and rescue professionals agree that some visitors' consumption of alcohol has been a major factor in contributing to increased public safety risks at the recreation site. Such public safety issues include an increase in fatal traffic accidents involving travelers driving to and from the recreation area, as well as increased problems associated with litter, sanitation, and noise. This final supplementary rule is needed to ensure a safe recreational setting for all visitors and the local communities of Triangle Lake and Blachly, Oregon.

This final supplementary rule is established under the authority of 43 CFR 8365.1-6, which allows BLM State Directors to establish supplementary rules for "the protection of persons, property, and public lands and resources." This final supplementary rule prohibits visitors of all ages from consuming, possessing, or furnishing any beverage defined as an alcoholic beverage by Oregon State Law within the boundaries of the Lower Lake Creek SRMA, including, but not limited to, the parking lot, day-use area and surrounding hillside, Lower Lake Creek Falls swimming area, and pathways leading to

the swimming area and waterfalls site. Prohibited acts under this provision include the consumption, possession, and furnishing of any alcoholic beverage within motor vehicles, tents, or other structures in the area described herein.

II. Discussion of Public Comments

On August 9, 2012, the BLM published a proposed supplementary rule (77 FR 47662) to replace an existing supplementary rule on alcohol use within the Lower Lake Creek SRMA. The existing supplementary rule, adopted in 1997, prohibits “consumption, possession, or furnishing of any alcoholic beverage in violation of Oregon State law.” Because of the way it is written, the existing supplementary rule does not actually ban the consumption, possession, or furnishing of alcohol in the SRMA.

The substance of the “Prohibited Act” in this final supplementary rule, which is the same as the substance of the proposed supplementary rule (i.e., alcoholic beverages), would prohibit consumption, possession, or furnishing of “any beverage defined as an alcoholic beverage by Oregon State law while on public lands” within the boundaries of the Lower Lake Creek SRMA. In the proposed supplementary rule, the BLM explained that the existing supplementary rule is insufficient to control an increasing population of visitors who consume, possess, or furnish alcohol, and the proposed supplementary rule would put in place an enforceable ban on alcoholic beverages for all visitors, regardless of age.

The BLM received no comments on the proposed supplementary rule. The BLM signed a decision record on the Proposed Rules for public land within the Lower Lake Creek SRMA Environmental Assessment (DOI-BLM-ORWA-E050-2012-0002-EA), which was posted on the BLM’s ePlanning website on October 11, 2016. The BLM received two comments during the environmental assessment’s (EA) 30-day comment period. These commenters thanked the BLM for moving forward with a ban on alcoholic beverages at the Lower Lake Creek Falls SRMA.

III. Procedural Matters

Executive Order (E.O.) 12866, Regulatory Planning and Review

This supplementary rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under E.O. 12866. This supplementary rule would not have an annual effect of \$100 million or more on the economy. It is not intended to affect commercial activity but imposes a rule of conduct on recreational visitors for public safety in a limited area of public lands. This supplementary rule would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal Governments or communities. This supplementary rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This supplementary rule does not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does it raise novel legal or policy issues; it merely strives to protect public safety.

National Environmental Policy Act

A ban on alcoholic beverages was analyzed in the EA titled “Proposed Rules for Public Land Within the Lower Lake Creek SRMA” (DOI-BLM-ORWA-E050-2012-0002-EA). This document was subject to a 30-day public comment period. On July 23, 2012, BLM determined that this supplementary rule did not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. On October 11, 2016, BLM signed a decision record based on the EA, which analyzed a permanent restriction on consuming alcohol. This supplementary rule merely regulates conduct on the BLM lands administered by the Siuslaw Field Office within the boundaries of the Lower Lake Creek Falls SRMA in order to protect public safety. A detailed environmental impact statement under NEPA is not required.

The BLM reviewed and signed a Determination of NEPA Adequacy (DNA) in 2018 (DOI-BLM-ORWA-N030-2017-0005-DNA) after confirming that the EA's analysis is still valid. Circumstances in the SRMA have not changed since then.

The BLM has placed the EA, the decision record, the finding of no significant impact, and the DNA on file in the BLM administrative record at the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

This final supplementary rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601, *et seq.* Congress enacted the RFA to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rule does not pertain specifically to commercial, not-for-profit, or governmental entities of any size, but to public consumption of alcoholic beverages on specific public lands.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more;
- (b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local Government agencies; or geographic regions; and
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This supplementary rule does not impose an unfunded mandate on State, local, or Tribal Governments of more than \$100 million per year; nor does it have a significant or unique effect on State, local, or Tribal Governments or the private sector. This supplementary rule does not impose requirements on State, local, or Tribal Governments. A statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

Paperwork Reduction Act

This supplementary rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)

This rule does not affect a taking of private property or otherwise have takings implications under E.O. 12630. This supplementary rule is not a Government action capable of interfering with constitutionally protected property rights. This supplementary rule does not address property rights in any form and does not cause the impairment of any private property rights. A takings implication assessment is not required.

Executive Order 13132, Federalism

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This supplementary rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of Government. A federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, the following rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

The Department of the Interior strives to strengthen its Government-to-Government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian Tribes and that consultation under the Department's Tribal consultation policy is not required.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

IV. Final Supplementary Rule

Author

The principal author of this supplementary rule is Cheryl Adcock, Field Manager for the Siuslaw Field Office, Oregon/Washington.

For the reasons stated in the preamble, and under authority for supplementary rules at 43 U.S.C. 1740 and 43 CFR 8365.1–6, the BLM Oregon/Washington State Director establishes a supplementary rule for public lands administered by the BLM in Oregon/Washington, to read as follows:

**Final Supplementary Rule for Public Lands in the Lower Lake Creek Falls Special
Recreation Management Area, Lane County, OR**

Definitions.

Alcoholic beverage uses the definition set forth in 2017 ORS 471.001(1).

Prohibited Acts

No person may consume, possess, or furnish alcoholic beverages within the boundaries of the Lower Lake Creek Falls SRMA, including, but not limited to, the parking lot, day-use area and surrounding hillside, Lower Lake Creek Falls swimming area, and pathways leading to the swimming area and falls site. Prohibited acts under this provision also include the consumption, possession, and furnishing of any alcoholic beverage within motor vehicles, tents, or other structures.

Exemptions

No persons, agencies, municipalities, or companies are exempt from the supplementary rule unless specifically authorized in writing by the BLM.

Penalties

Any person who violates this supplementary rule may be tried before a United States magistrate and fined in accordance with 18 U.S.C. 3571, imprisoned no more than 12 months under 43 U.S.C. 1733(a) and 43 CFR 8360.0-7, or both. In accordance with 43 CFR 8365.1-7, State or local officials also impose penalties for violations of Oregon law.

Barry R. Bushue,

Bureau of Land Management, State Director, Oregon/Washington.